

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DAVID LEE, <i>et al.</i> , <div style="text-align: right; padding-right: 20px;">Plaintiffs,</div>)	Case No. 2:12-cv-01397-LRH-CWH
vs.)	<u>ORDER</u>
DARCY SPEARS,)	Application to Proceed <i>In Forma</i>
Defendant.)	<i>Pauperis</i> (#1) and Screening of
)	Complaint

This matter is before the Court on Plaintiffs' Application to Proceed in Forma Pauperis (#1), filed August 7, 2012.

BACKGROUND

Plaintiff David Lee alleges that Defendant Darcy Spears ran series of stories relating to Plaintiff and his company Diversity Youth Sports. The stories were allegedly broadcast by KTNV Channel 13 Action News in Las Vegas. According to Plaintiff Lee, the stories are untrue. Thus, he seeks damages for the both libel and slander as against Ms. Spears. He also seeks damages for the intentional infliction of emotional distress. All of the claims asserted by Plaintiffs are brought under Nevada state law.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Plaintiff filed this instant action and attached a financial affidavit to his application and complaint as required by 28 U.S.C. § 1915(a). Reviewing the financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result,

1 Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

2 **II. Screening the Complaint**

3 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a
4 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to
5 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which
6 relief may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is
7 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be
8 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a
9 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to
10 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be
11 dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual
12 scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual
13 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly
14 incredible, whether or not there are judicially noticeable facts available to contradict them.”
15 *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under §
16 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing
17 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be
18 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

19 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
20 complaint for failure to state a claim upon which relief can be granted. Review under Rule
21 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*
22 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and
23 plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2);
24 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require
25 detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic
26 recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
27 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled
28 factual allegations contained in the complaint, but the same requirement does not apply to legal

1 conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a cause of action,
 2 supported only by conclusory allegations, do not suffice. *Id.* at 678. Secondly, where the claims
 3 in the complaint have not crossed the line from plausible to conceivable, the complaint should be
 4 dismissed. *Twombly*, 550 U.S. at 570.

5 **A. Federal Question Jurisdiction**

6 As a general matter, federal courts are courts of limited jurisdiction and possess only that
 7 power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004).
 8 Pursuant to 28 U.S.C. § 1331, federal district courts have original jurisdiction over “all civil
 9 actions arising under the Constitution, laws, or treaties of the United States.” “A case ‘arises
 10 under’ federal law either where federal law creates the cause of action or ‘where the vindication
 11 of a right under state law necessarily turn[s] on some construction of federal law.’” *Republican*
 12 *Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting *Franchise Tax Bd.*
 13 *v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). The presence or absence of
 14 federal-question jurisdiction is governed by the “well-pleaded complaint rule.” *Caterpillar, Inc.*
 15 *v. Williams*, 482 U.S. 386, 392 (1987). Under the well-pleaded complaint rule, “federal
 16 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly
 17 pleaded complaint.” *Id.* Plaintiff has not stated any federal claims. All of Plaintiff’s claims
 18 against Defendant are tort claims arising under state law, and no federal question jurisdiction
 19 pursuant to 28 U.S.C. § 1331 exists.

20 **B. Diversity Jurisdiction**

21 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil
 22 actions in diversity cases “where the matter in controversy exceeds the sum or value of \$75,000”
 23 and where the matter is between “citizens of different states.” Plaintiff has not invoked the
 24 court’s diversity jurisdiction pursuant to 28 U.S.C. § 1332 because he has not alleged that the
 25 parties are citizens of different states. To the contrary, the complaint indicates that all parties are
 26 citizens of Nevada. Because all of the claims arise under Nevada state law and the parties are all
 27 citizens of Nevada, the Court finds that it does not have jurisdiction under 28 U.S.C. § 1332.

28 Based on the foregoing and good cause appearing therefore,

IT IS FURTHER ORDERED that the movant herein is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the issuance of subpoenas at government expense.

IT IS FURTHER ORDERED that the Complaint is **dismissed** without prejudice for failure to state a claim upon which relief can be granted, with leave to amend. Plaintiff will have **thirty (30)** days from the date that this Order is entered to file his Amended Complaint, if he believes he can correct the noted deficiencies. Failure to comply with this Order may result in the Court recommending that this action be dismissed.


C.W. Hoffman, Jr.
United States Magistrate Judge